

Appln No.: 10/780,421
Amendment Dated: May 16, 2006
Reply to Office Action of November 16, 2005

REMARKS/ARGUMENTS

This is in response to the Office Action mailed November 16, 2005 for the above-captioned application. Reconsideration and further examination are respectfully requested.

Applicants request an extension of time sufficient to make this paper timely and enclose an authorization to charge the fee.

The specification has been amended to correct the reference to the parent application and to indicate its current status, to correct typographical errors and to add a section for the "Brief Description of the Drawings."

Claims 1 and 8 have been amended to include the limitation that the thermoplastic material is injected molded to form the crate. This limitation is supported on Page 4, first complete paragraph. Claim 10 has been added specifying that the thermoplastic material contains at least 95% of the polycarbonate and polyester resins. This limitation is supported at Page 16, line 20. Claims 11 and 12 reproduce claims 6 and 7 but are dependent on claim 10. Method claims 13-16 have also been added.

The Examiner rejected claims 1-3, and 5-9 under 35 USC § 103 as obvious over the combination of Smarook and Fox et al. Smarook discloses a crate, and Fox discloses a polycarbonate/polyester blend. The Examiner argues that making a Smarook's crate from the polycarbonate/polyester blend of Fox et al would have been obvious.

As a first matter, Applicants note that the crate of Smarook is made by thermoforming sheets of plastic and then assembling them into a crate. The comment at Col. 17, lines 4-20 on which the Examiner relies is based on frozen in strains that occurs when the materials are "press formed into blanks." As noted above, claims 1 and 8 have been amended to include the limitation that the crates are formed by injection molding. Because the thermoplastic material is molten, injection molding avoids the type of frozen in strain mentioned by Smarook.¹

The Examiner has asserted that there is a to combine the teaching of Fox with Smarook based on this statement in the Smarook patent and a characterization that the Fox composition is "easier to mold." As a first matter, it is not clear where the Examiner finds support in the Fox reference for the statement that the blend is "easier to mold." At Col. 2 Fox says the composition

¹ It is noted that some strains can be frozen into injection molded articles if there is an improper cooling program, but this is not the same as the inherent strain capture mentioned by Smarook.

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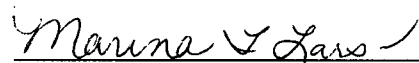
is more solvent resistant and that it can retain better transparency and better dimensional stability than **polyester** alone. (See also, Col. 9 lines 12-21) It also says that shaping or vacuum forming can be done without a drying step. Applicants do not find the asserted teaching of improved molding properties. Furthermore, if such a teaching of improved injection molding properties were presented, the Examiner has offered no reasons why this would be considered relevant to the properties of a materials after thermoforming. As such, there is no showing that changing the material to a blend would alter the frozen in stain problem mentioned in Smarook. Thus, this combination of references is not properly combined, and does not support the Examiner's arguments. This rejection should therefore be withdrawn.

Applicants further note that the limitations added in claim 10 are not taught be the combined references. Fox et al, does not say how much of the "conventional stabilizers" are added in the examples or what these stabilizers are, but the clear implication and indeed the Examiner's argument is that you can add large amounts of stabilizers. Thus, the references do not specifically teach or suggest compositions in which the resin components make up at 95 % by weight or more of the thermoplastic material.

The Examiner also claim 4 as obvious over the combination of Smarook and Fox with Allen et al. As the Examiner indicates, Allen discloses a glycol-containing polyester within the scope of the claims. Allen states that the polyester allows the use of lower molding temperatures. Allen's examples however, relate to injection molding (See for example Example 2) and offer no teaching that would lead a person skilled in the art to replace part of the polycarbonate with this material in a press forming application with an expectation of getting rid of the frozen in strain addressed in Smarook by post-forming annealing.

For these reasons, Applicants submit that the rejections under 35 USC § 103 are in error and should be withdrawn. This application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully submitted,



Marina T. Larson, Ph.D
Attorney/Agent for Applicant(s)
Reg. No. 32038

(970) 262-1800